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July 15, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: In the Matter of A La Carte and Themed Tier Programming and Pricing Options For Programming Distribution On Cable Television And Direct Broadcast Satellite Systems
MB Docket No. 04-207

Dear Ms. Dortch:

The New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") welcomes the opportunity to submit comments on the provision of a la carte and "themed tier" services by cable television and direct broadcast satellite systems to be used by the Federal Communications Commission ("Commission") in preparing a Report that will address the ability of multichannel video programming distributors ("MVPDs") to provide a la carte services to customers on a voluntary basis. The Ratepayer Advocate is an agency with a statutory mandate to protect the interests of utility and cable consumers in New Jersey and is a strong proponent of increased competition in the utility and cable markets as a means of providing ratepayers more choice, better quality, and lower rates for services. The Ratepayer Advocate has been a longstanding supporter of a la carte pricing because cable prices have risen to alarming levels in New Jersey and this trend of skyrocketing cable prices has spread to other parts of the country and competition from satellite television has failed to effectively control these runaway cable prices. Therefore, the time has come to give consumers more choice in picking the cable channels they want instead of being forced into buying a tier of channels, some of which they never watch.[1]

There is no denying that cable prices have risen over the past several years and will continue to rise unless some action is taken to rein in cable bills. Cable industry leaders often blame rising programming costs for these rising cable prices. Sports programming is often singled out as the number one contributor to the rising cable prices because according to Cox Communications CEO James Robbins, while less than 20% of Cox's customers are sports fans, the cost of sports programming has increased 20%.[2]

Despite cable operators' claims that cable prices have risen as a result of programming cost increases, they have been hesitant to provide local franchising authorities ("LFA") with verifiable programming cost and revenue data to evaluate the impact of programming costs on cable rates. Cable operators submit only their basic tier programming costs to LFAs as part of the rate regulation process and do not routinely submit any programming costs to the Commission. Thus cable operators do not disclose to any regulatory body what they are actually paying for most of their programming. Furthermore, cable operators receive substantial "launch fees" from programmers for adding new channels to cable systems, for advertising new channels on existing channels, in program guides, on or with subscriber bills, and for other channel launch-related services, but they do not uniformly treat them as programming revenues which offset total programming costs. In addition, cable operators often delay, or refuse to comply with LFA's requests to disclose terms of their programming contracts, thus making it difficult to determine how volume discounts are allocated. Therefore, the cable industry should be required to provide specific information about all channel programming costs, programming launch fee revenue, and corporate allocation of volume discounts. Until this vital information is provided, no definitive proof will exist to support the claim that rising programming costs alone have led to higher cable rates.

While increasing programming costs may explain some of the rising costs of cable, it is by no means the only contributing factor. Cable rates are also covering debt service, paying for acquisitions and recouping infrastructure investment. Furthermore, many of the channels available to consumers are actually owned by the cable companies providing the service, and they often raise the prices of their affiliated channels and include these channels in tiers that customers are forced to buy.

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[1] / According to a 2004 Consumer Federation of America/Consumers Union Report, the average consumer watches about 17 channels regularly, with the top 20 channels accounting for approximately three-quarters of all viewing. *See The Continuing Abuse of Market Power By the Cable Industry: Rising Prices, Denial of Consumer Choice, and Discriminatory Access to Content* (Feb. 2004). http://www.consumerfed.org/mpcableindustry.pdf

[2]/ James Robbins, Testimony before the Full Committee Hearing of the Senate Commerce, Science and Transportation Committee, May 6, 2003, http://commerce.senate.gov/hearings/witnesslist.cfm?id=749.

Another potential contributor to rising cable rates is the ability of broadcast networks to take advantage of the Commission's retransmission consent rule[3] by forcing cable operators to purchase cable programming owned by the broadcast stations and place these programs on the expanded-basic tier in order for their customers to receive the local network channels.[4] The Ratepayer Advocate urges the Commission to take a closer look at their retransmission rule because many if not most of these additional channels are forced onto customers at the expanded-basic subscription tier, which squeezes them into as many homes as possible. This type of behavior is not in the public interest because consumers are essentially paying for programming that may not interest them just so they can watch their network affiliate channel.

The cable industry argues that the technical problems associated with providing a la carte in a predominantly analog cable environment are overwhelming and cost prohibitive.[5] They state that there is no practicable way to provide analog channels on an a la carte basis. Instead the cable operator would have to convert the analog signals to digital signals and in order to receive the digital programming, and every customer would need an addressable set-top box for every television in the home which would cost billions of dollars. While cable operators will have to make software adjustments inside the cable network to offer a la carte channels, systems that have been upgraded for digital cable would not require new technology in consumers homes. And as cable operators continue to upgrade and expand its plant so that it can offer consumers new digital programming, HDTV, video-on-demand, high speed cable Internet, and telephony service, they must also consider and implement enabling equipment to handle a la carte options.

The cable industry has also voiced concerns that they will experience diminished advertising revenues with an a la carte option.[6] However, advertising is tied to television viewership. Those who claim that more choice in cable television programming means less advertising dollars are basically saying that a la carte means people will watch less television. In fact, the opposite may be true. As consumers are able choose the channels that interest them, more TV viewership may result because consumers will be watching and paying for the programs they want to watch. Furthermore, the use of a la carte channel selection would enable advertisers to learn more about their audiences, allowing the possibility of increased revenues from more targeted demographic information.

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[3]/ The rule states that "no multichannel video programming distributor shall retransmit the signal of any commercial broadcasting station without the express authority of the originating station." *See* 47 CFR § 76.64.

[4]/ James M. Gleason, Testimony before the Full Committee Hearing of the Senate Commerce, Science and Transportation Committee, May 6, 2003, http://commerce.senate.gov/hearings/witnesslist.cfm?id=749

[5]/ National Cable and Telecommunications Association Policy Paper, *The Pitfalls Of A La Carte: Fewer Choices, Less Diversity, Higher Prices* at 3. May 2004. ("*NCTA Policy Paper*").

[6]/ *NCTA Policy Paper* at 6.

The Ratepayer Advocate strongly believes that consumers should not only have access to information concerning the price of the entire bundled service offering but the price for each component of the bundled service as well. With access to such information, the consumer can assess what discounts they are receiving for purchasing the bundled service versus the price of the bundled service if each component was purchased separately (the "separately priced component"). The disclosure of the "separately priced component" will assist consumers in deciding to purchase a bundled offering or a basic service tier package with other services purchased on an *a la carte* basis. The disclosed "separately priced component" should serve as the benchmark ceiling price when such service is offered on an a la carte basis. If a cable operator wants to charge a price higher than the "separately priced component" price, the cable operator must submit a cost of service showing to the LFA by express Commission rule.

The Ratepayer Advocate submits that a la carte pricing will be a definite improvement over the current tier pricing system if it provides consumers direct control and choice over the channels they buy and the content that is coming into their homes while avoiding price manipulations by the cable operator. The Commission must also carefully consider whether and how to integrate a la carte channels into the existing tier system of rate regulation because in the past, cable operators have used their control over a la carte tier pricing as a means to charge more, not less per channel.

Respectfully Submitted,

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